

JS-6

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**
11

12
13 **E.F., et al.,**

14
15 **Plaintiffs,**

16 **v.**

17 **NEWPORT MESA UNIFIED SCHOOL**
18 **DISTRICT,**

19 **Defendant.**
20
21
22

} **Case No.: SACV 14-00455-CJC(RNBx)**

} **ORDER GRANTING DEFENDANT'S**
} **MOTION FOR SUMMARY**
} **JUDGMENT**

23
24 **I. INTRODUCTION**
25

26 Plaintiffs E.F., by and through his parents, Eric and Aneida Fulsang, and Eric and
27 Aneida Fulsang (collectively, "Plaintiffs") bring this action against Defendant Newport-
28 Mesa Unified School District (the "District") for violations of several state and federal

1 statutes. (Dkt. No. 1 [“Compl.”].) Before the Court is the District’s motion for summary
2 judgment on the Complaint’s remaining five claims. (Dkt. No. 43.) For the following
3 reasons, the Court GRANTS the District’s motion.

4 5 **II. BACKGROUND**

6
7 E.F. is a young boy who has resided within the jurisdictional boundaries of the
8 Newport-Mesa Unified School District in California at all relevant times during this
9 litigation. (Dkt. No. 13 [“Administrative R.”] at 491.) E.F. has autism and suffers from
10 cognitive and communicative delays. Because of his autism, E.F. is eligible for special
11 education services under the Individuals with Disabilities Education Act (“IDEA”). His
12 eligibility obligates the District to provide him with a “free appropriate public education”
13 (“FAPE”) suited to his individual needs. 20 U.S.C. § 1412(a)(1). As required by IDEA,
14 the District convenes regular meetings to develop an annual “individualized education
15 plan” (“IEP”) identifying E.F.’s educational goals and laying out particular services the
16 District will provide to E.F. in an effort to achieve those goals. The District placed E.F.
17 in its special education program in February 2009 and has held developed IEPs at annual
18 IEP conferences thereafter. (Administrative R. at 563.)

19
20 Dissatisfied with the District’s efforts to accommodate E.F.’s needs, E.F.’s parents
21 filed a request for a due process hearing before the California Office of Administrative
22 Hearings (“OAH”) on May 12, 2012. (Compl. ¶ 66.) The OAH hearing was held before
23 an administrative law judge (“ALJ”) in October 2013, where Plaintiffs contended that the
24 District failed to provide E.F. with a FAPE in a number of different ways, including by
25 failing to properly assess E.F.’s capabilities, sufficiently train its staff, and provide E.F.
26 with an electronic assistive technology (“AT”) device at the appropriate time.
27 (Administrative R. at 1274.). After receiving approximately 50 documents into evidence
28 and hearing testimony from 16 witnesses, the ALJ issued a decision on December 26,

2013 (the “OAH Decision”). (*See id.* at 1271–1331.) The ALJ rejected all of Plaintiffs’ claims except one: that the District should have given E.F. an electronic assistive technology device approximately one year earlier than it did. (*Id.* at 1274.) Accordingly, the ALJ awarded E.F. 20 sessions of 20-minute, individual AT services to assist him with operating the AT device—an iPod Touch—for the purposes of functional communication. (*Id.* at 1331.)

In March 2014, Plaintiffs filed this action, appealing the OAH Decision to this Court pursuant to 20 U.S.C. § 1415(i)(3)(A) and asserting 11 other causes of action. (*See Compl.*) This Court affirmed the OAH Decision on June 23, and after a number of other dismissals and joint stipulations, only five causes of action remain: the second, third, eighth, tenth, and twelfth. The second and third causes of action allege violations of two federal civil rights statutes: section 504 of the Rehabilitation Act (“section 504”) and Title II of the Americans with Disabilities Act (“ADA”), respectively. The eighth cause of action alleges violation of the California Unruh Civil Rights Act and two sections of the California Civil Code. The tenth cause of action alleges a breach of the duty to supervise students and staff pursuant to the California Constitution and California Education Code. And the twelfth cause of action is for attorneys’ fees, pursuant to an IDEA provision that awards attorneys’ fees to a prevailing party in an IDEA action.

III. LEGAL STANDARD

The Court may grant summary judgment on “each claim or defense—or the part of each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a). Summary judgment is proper where the pleadings, the discovery and disclosure materials on file, and any affidavits show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.*; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial

1 burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp.*,
2 477 U.S. at 325. A factual issue is “genuine” when there is sufficient evidence such that
3 a reasonable trier of fact could resolve the issue in the nonmovant’s favor. *Anderson v.*
4 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” when its resolution
5 might affect the outcome of the suit under the governing law, and is determined by
6 looking to the substantive law. *Id.* “Factual disputes that are irrelevant or unnecessary
7 will not be counted.” *Id.* at 249.

8
9 Where the movant will bear the burden of proof on an issue at trial, the movant
10 “must affirmatively demonstrate that no reasonable trier of fact could find other than for
11 the moving party.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).
12 In contrast, where the nonmovant will have the burden of proof on an issue at trial, the
13 moving party may discharge its burden of production by either (1) negating an essential
14 element of the opposing party’s claim or defense, *Adickes v. S.H. Kress & Co.*, 398 U.S.
15 144, 158–60 (1970), or (2) showing that there is an absence of evidence to support the
16 nonmoving party’s case, *Celotex Corp.*, 477 U.S. at 325. Once this burden is met, the
17 party resisting the motion must set forth, by affidavit, or as otherwise provided under
18 Rule 56, “specific facts showing that there is a genuine issue for trial.” *Anderson*, 477
19 U.S. at 256. A party opposing summary judgment must support its assertion that a
20 material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the
21 moving party’s materials are inadequate to establish an absence of genuine dispute, or
22 (iii) showing that the moving party lacks admissible evidence to support its factual
23 position. Fed. R. Civ. P. 56(c)(1)(A)–(B). The opposing party may also object to the
24 material cited by the movant on the basis that it “cannot be presented in a form that
25 would be admissible in evidence.” Fed. R. Civ. P. 56(c)(2). But the opposing party must
26 show more than the “mere existence of a scintilla of evidence”; rather, “there must be
27 evidence on which the jury could reasonably find for the [opposing party].” *Anderson*,
28 477 U.S. at 252.

1 In considering a motion for summary judgment, the court must examine all the
 2 evidence in the light most favorable to the non-moving party, and draw all justifiable
 3 inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W.*
 4 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630–31 (9th Cir. 1987).
 5 The court does not make credibility determinations, nor does it weigh conflicting
 6 evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992).
 7 But conclusory and speculative testimony in affidavits and moving papers is insufficient
 8 to raise triable issues of fact and defeat summary judgment. *Thornhill Pub. Co., Inc. v.*
 9 *GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). The evidence the parties present must be
 10 admissible. Fed. R. Civ. P. 56(c). “If the court does not grant all the relief requested by
 11 the motion, it may enter an order stating any material fact — including an item of
 12 damages or other relief — that is not genuinely in dispute and treating the fact as
 13 established in the case.” Fed. R. Civ. P. 56(g).

14 15 **IV. ANALYSIS**

16 17 **A. Rehabilitation Act Cause of Action**

18
19 Plaintiffs’ second cause of action alleges that the District failed to provide E.F.
 20 with a FAPE that met the requirements of section 504 of the Rehabilitation Act, 29
 21 U.S.C. § 794. (Compl. ¶¶ 195–213.) Section 504, like IDEA, requires school districts to
 22 provide disabled students with a FAPE, and although the FAPE requirements under
 23 IDEA and section 504 are not identical, “a school district’s provision of a FAPE under
 24 the IDEA meets Section 504 FAPE requirements.” *K.M. v. Tustin Unified Sch. Dist.*, 725
 25 F.3d 1088, 1099 (9th Cir. 2013). The only area in which the ALJ determined that the
 26 District failed to provide E.F. with a FAPE was in its failure to provide him with an AT
 27 assessment and device between February 2012 and January 2013. Because the ALJ’s
 28

1 findings are preclusive here, *id.* at 1101, Plaintiffs’ potential success on their section 504
2 cause of action is therefore limited to the narrow AT issue.

3
4 Plaintiffs seek injunctive and declaratory relief as well as compensatory damages
5 for their section 504 claim. Their plea for injunctive and declaratory relief is apparently
6 premised on their allegation that the District’s “discriminatory conduct is ongoing.”
7 (Compl. ¶ 212.) But because the ALJ determined that the District’s sole violation of
8 IDEA was its failure to timely provide E.F. with an AT assessment or device, the District
9 has been compliant with IDEA’s FAPE requirement since January 2013, when it finally
10 gave E.F. that assessment and device. (Administrative R. at 1274.) And because the
11 District is currently compliant with IDEA’s FAPE requirement, it is also compliant with
12 section 504’s FAPE requirement. *See K.M.*, 725 F.3d at 1099. Accordingly, declaratory
13 and injunctive relief are unavailable. The only potential relief available to Plaintiffs is
14 compensatory damages for the previous denial of a FAPE—*i.e.*, the District’s failure to
15 provide E.F. with an AT assessment and device between February 2012 and January
16 2013.

17
18 Recovery of damages under section 504 requires a showing of intentional
19 discrimination. *Ferguson v. City of Phoenix*, 157 F.3d 668, 674 (9th Cir. 1998)
20 (“[C]ompensatory damages are not available under Title II or § 504 absent a showing of
21 discriminatory intent.”). Intentional discrimination does not require a showing of
22 discriminatory animus or ill will, but Plaintiffs must at least show “deliberate
23 indifference,” or “knowledge that a harm to a federally protected right is substantially
24 likely, and a failure to act upon that likelihood.” *Mark H. v. Lemahieu*, 513 F.3d 922,
25 938 (9th Cir. 2008). Negligence is not sufficient. *Duvall v. Cty. of Kitsap*, 260 F.3d
26 1124, 1139 (9th Cir. 2001).

27
28 //

1 The District argues that the record lacks any evidence that it acted with deliberate
2 indifference, and that it is therefore entitled to summary judgment on Plaintiffs' section
3 504 cause of action for damages. Plaintiffs, in response, cite to three pieces of the record.
4 The first is a portion of the examination of Dr. Kathy Murphy, a District employee, at the
5 OAH Hearing. There, Plaintiffs' counsel asked Dr. Murphy why she had not proposed an
6 AT assessment of E.F. when she heard about him using an iPad. (Dkt. No. 46-2 at 6.)
7 Dr. Murphy responded that although the school was "excited to see" that E.F. had begun
8 to use an electronic device, his failure to "demonstrat[e] the rest of the readiness skills at
9 that time" convinced Dr. Murphy that an AT assessment was premature. (*Id.*) She
10 continued to explain that the school district "did many things to make [E.F.] ready" for an
11 electronic device, including "collaborating with the teacher to make . . . adjustments and
12 to supplement . . . visual aids for communication purposes across the day." (*Id.*)

13
14 No reasonable factfinder could find that Dr. Murphy's testimony supports a finding
15 that the District acted with deliberate indifference. To the contrary, Dr. Murphy offered
16 her opinion as to the value of an AT assessment, provided a rationale for that opinion,
17 and described how the District proceeded in lieu of an AT assessment. This evidence
18 demonstrates that the District was thoughtful and thorough—though ultimately wrong—
19 when it considered the best way to provide E.F. with an education. *See Zasslow v. Menlo*
20 *Park City Sch. Dist.*, No. C-01-0537 SC, 2001 WL 1488617, at *17 (N.D. Cal. Nov. 19,
21 2001) (noting, in the context of an IDEA violation, that "[f]ar from intentionally
22 discriminating against Plaintiffs for the unfortunate disabilities from which they suffer,
23 the District has devoted time and expense to coming to some arrangement that would
24 satisfy Plaintiffs"); *see also Brantley ex rel. Brantley v. Ind. Sch. Dist. No. 625, St. Paul*
25 *Pub. Schs.*, 936 F. Supp. 649, 657 (D. Minn. 1996) (holding that a plaintiff could not
26 meet the section 504 *mens rea* requirement because "[t]o the extent the District made any
27 inappropriate decisions, they were, at most, errors in professional judgment").

1 Plaintiffs' second citation to the record is to a single-page IEP summary. (Dkt. No.
2 48; Exh. 12.) The summary describes an IEP conference where E.F.'s parents and
3 teachers adjusted goals, identified successes, and discussed ongoing concerns. (*Id.*)
4 While the IEP team did conclude that E.F. had made "limited progress" and merited a
5 "re-evaluation," nothing in the IEP summary provides a basis for an allegation of
6 intentional discrimination, and Plaintiffs provide no substantive explanation for the
7 citation. (*Id.*)

8
9 Plaintiffs' final citation to the record in support of a finding of deliberate
10 indifference unhelpfully cites to four declarations in their entirety. Those declarations
11 collectively consist of more than 40 pages, leaving unclear what exactly in those
12 declarations the Plaintiffs believe would support a finding of deliberate indifference.
13 "The district court need not examine the entire file for evidence establishing a genuine
14 issue of fact, where the evidence is not set forth in the opposing papers with adequate
15 reference so that it could be conveniently found." *Carmen v. S.F. Unified Sch. Dist.*, 237
16 F.3d 1026, 1031 (9th Cir. 2001).

17
18 Suffice it to say that none of Plaintiffs' citations to the record reveal any evidence
19 that could enable a reasonable factfinder to conclude that the District acted with
20 deliberate indifference toward E.F. And Plaintiffs' Statement of Facts, (Dkt. No. 50),
21 that they filed in opposition to the District's summary judgment motion is similarly
22 deficient. Of its 35 facts, only one could reasonably be said to have anything at all to do
23 with the District's *mens rea*—Plaintiffs' account of comments made by E.F.'s teacher,
24 Ms. Daria Fenton, at the February 26, 2014 IEP conference. There, Ms. Fenton
25 commented that "whether or not E.F. can know A, B, and C isn't as important as being
26 able to identify scissors or crayons in the grand scheme of life for him." Although Ms.
27 Fenton might have chosen different words, the thrust of her sentiment is clear: she felt
28 that E.F. would benefit more from being taught functional skills rather than abstract

1 skills. While reasonable people could disagree over the merits of this belief, no
2 reasonable factfinder could conclude that it is evidence of deliberate indifference or
3 intentional discrimination. On the contrary, it is plain that Ms. Fenton was
4 recommending the course of teaching that she thought would be *most* valuable for E.F.
5 Indeed, Ms. Fenton continued, “I’m just saying that right now [learning the alphabet is]
6 not what I view as the most important thing for [E.F.’s] functioning on a daily basis.”
7 The only credible reading of Ms. Fenton’s comments is that she was attempting to tailor
8 E.F.’s education to his needs as required by the IDEA and section 504 FAPE
9 requirements, not that she was intentionally discriminating against him as a result of his
10 disability. *See Zasslow*, 2011 WL 1488617, at *17 (“[A] good-faith attempt to comply
11 with [section 504] is clearly apparent here, and that is enough to put to rest charges that
12 the District somehow deliberately singled out the Plaintiffs simply because of their
13 disabilities.”).

14
15 Ms. Fenton’s comments also fail to raise a triable issue of material fact for two
16 additional reasons. First, they are unrelated to the only way in which the District failed to
17 provide a FAPE under IDEA. Her comments have nothing to do with the District’s
18 failure to provide E.F. with an AT device. *See Mark H.*, 513 F.3d at 938 (“[A] public
19 entity can be liable for damages under § 504 if it intentionally or with deliberate
20 indifference *fails to provide meaningful access or reasonable accommodation* to disabled
21 persons” (emphasis added)). And second, Ms. Fenton’s comments post-date the OAH
22 Decision entirely. Plaintiffs may believe that the District’s decision to teach E.F.
23 functional skills rather than abstract skills is a *new* violation of section 504’s FAPE
24 requirement, and that the District was deliberately indifferent when it committed *this*
25 violation. But to demonstrate that, they will need to first exhaust their administrative
26 remedies through IDEA. *See J.W. v. Fresno Unified Sch. Dist.*, 570 F. Supp. 2d 1212,
27 1219 (E.D. Cal. 2008) (“[C]laims asserted under Section 504 are subject to the IDEA
28 exhaustion requirement.”).

1 Apart from their citations to the record, Plaintiffs argue that the District “dumb[ed]
 2 down” E.F.’s academics and limited his educational resources based on the “self-serving
 3 determination that E.F. lacked the cognitive ability and ‘readiness skills’ to access and
 4 benefit from the requested auxiliary equipment.” (Dkt. No. 48 [Pl.’s Opp’n] at 19.)
 5 These allegations are without evidentiary support. The record is replete with evidence of
 6 good-faith efforts on the part of the District to provide E.F. with an appropriate
 7 education. “This is not to say that the District has behaved impeccably, or that its
 8 conduct has been error-free.” *Zasslow*, 2001 WL 1488617, at *17. But the evidence is
 9 such that no reasonable factfinder could conclude that the District acted with deliberate
 10 indifference. As a result, Plaintiffs may not collect compensatory damages under section
 11 504. Because Plaintiffs may not collect damages, nor may they obtain declaratory or
 12 injunctive relief on their section 504 cause of action, the Court GRANTS partial
 13 summary judgment on the second cause of action.

14 15 **B. ADA Cause of Action**

16
 17 Plaintiffs’ third cause of action is for a violation of Title II of the ADA. In the
 18 disabled student accommodation context, Title II provides for at least two theories of
 19 liability. First, a plaintiff may allege that a district’s failure to provide a FAPE under
 20 section 504 also violates the antidiscrimination provisions of the ADA, 28 C.F.R.
 21 § 35.130. *See, e.g., T.B. v. San Diego Unified Sch. Dist.*, No. 12-56060, 2015 WL
 22 4591816, at *11 (9th Cir. July 31, 2015) (“[T]he [plaintiffs] alleged that the school
 23 district violated the ADA and Section 504 of the Rehabilitation Act by failing to offer
 24 and implement [a FAPE].”). Alternatively, a plaintiff may allege that a district has failed
 25 to meet the requirements of the ADA’s “effective communications” regulations, 28
 26 C.F.R. § 35.160, which require public entities to furnish appropriate auxiliary aids and
 27 services where necessary. *See, e.g., K.M.*, 725 F.3d at 1099 (“[Plaintiffs’ ADA claim is
 28

1 not] predicated on a denial of FAPE under any definition of that term . . . [rather,
2 Plaintiffs] ground their claims in the Title II effective communications regulation.”).

3
4 Here, the parties disagree on the relevant theory of the violation. The District
5 argues that according to the Complaint, Plaintiffs’ theory is that the District’s failure to
6 provide a FAPE violated the ADA’s antidiscrimination regulations. (Dkt. No. 52, Def.’s
7 Reply, at 6.) Plaintiffs, in their opposition brief, argue that their theory is actually that the
8 District failed to comply with the ADA’s effective communications regulations. (Pl.’s
9 Opp’n at 19–21.)

10
11 Because Plaintiffs’ Complaint, and not their brief in opposition to summary
12 judgment, defines the nature of their legal theories, the Court turns to the Complaint to
13 determine the nature of Plaintiffs’ ADA violation theory. In paragraph 218 of the
14 Complaint, Plaintiffs pled that E.F.’s rights under the ADA were violated “due to the
15 denial of FAPE.” And in paragraph 217, Plaintiffs note that as “there is no significant
16 difference between the substantive standards of the ADA and the Rehabilitation Act, the
17 claims are therefore analyzed together.” This statement only makes sense if both the
18 section 504 and ADA claims are premised on the alleged denial of a FAPE. *See, e.g.,*
19 *T.B.*, 2015 WL 4591816, at *11 (“[In the antidiscrimination context, the] language of the
20 ADA is almost identical [to section 504], and courts typically analyze the two provisions
21 together.”). The pleadings do not contain the words “effective communications,” and
22 they specifically note that the “pertinent part” of the ADA regulations are the
23 antidiscrimination regulations. (Compl. ¶ 220 [citing 28 C.F.R. § 35.130(b)(3)]). There
24 can be little doubt that when Plaintiffs filed their Complaint, they—and the District—
25 understood the ADA cause of action to allege that the District’s denial of a FAPE
26 violated the ADA’s antidiscrimination provisions, not that the District violated the
27 ADA’s effective communication regulations.

1 It is now too late in the day for Plaintiffs to change course and pick a different
 2 theory of liability under the ADA. A party “may not effectively amend its Complaint by
 3 raising a new theory . . . in its response to a motion for summary judgment.” *La*
 4 *Asociacion De Trabajadores De Lake v. City of Lake Forest*, 624 F.3d 1083, 1089 (9th
 5 Cir. 2010). The District had no notice that Plaintiffs would attempt to switch theories in
 6 their opposition brief. And Plaintiffs have had sixteen months to amend their Complaint,
 7 and have not done so. They may not reverse course now. Because the ADA claim is
 8 premised on a denial of a FAPE, it suffers from the same defects that Plaintiffs’ section
 9 504 claim does. As a result, the Court GRANTS partial summary judgment as to the
 10 third cause of action.

11 12 **C. State Law Causes of Action**

13
 14 Plaintiffs’ eighth cause of action is for violations of the Unruh Civil Rights Act and
 15 California Civil Code sections 51 and 54.1. Their tenth cause of action is for breach of
 16 the duty to protect and supervise students and employees pursuant to Article I section 28
 17 of the California Constitution and the California Education Code, sections 32260–32262,
 18 44807, and 44808. State sovereign immunity prevents Plaintiffs from bringing either of
 19 these causes of action against the District in federal court.

20
 21 Pursuant to the Eleventh Amendment of the United States Constitution, a state is
 22 immune from private suits in federal court unless Congress has explicitly and validly
 23 abrogated the state’s sovereign immunity or the state waives its immunity. *Bd. of*
 24 *Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 363 (2001) (“[N]onconsenting
 25 States may not be sued by private individuals in federal court.”). It is well-settled that
 26 school districts are arms of the state for the purposes of the state sovereign immunity
 27 doctrine. *Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 251 (9th Cir. 1992);
 28 *Stoner v. Santa Clara Cty. Office of Educ.*, 502 F.3d 1116, 1123 (9th Cir. 2007). And as

to the state law claims at issue here, Congress has not abrogated California's state sovereign immunity, nor has California waived that immunity. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985) (holding that Article III section 5 of the California Constitution does not constitute a waiver of California's Eleventh Amendment immunity); *Corales v. Bennett*, 567 F.3d 554, 573 (9th Cir. 2009) (dismissing Unruh Act claims against school officials in federal court as barred by the Eleventh Amendment); *Zasslow*, 2001 WL 1488617, at *18 (dismissing California Education Code claims against school district in federal court as barred by the Eleventh Amendment). Accordingly, the Court finds that the District is immune from Plaintiffs' state law claims pursuant to the doctrine of state sovereign immunity, and the Court GRANTS partial summary judgment as to the eight and tenth causes of action.

D. Attorneys' Fees Cause of Action

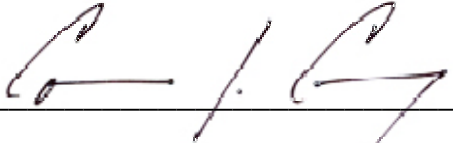
Plaintiffs' twelfth cause of action is for attorneys' fees under IDEA. Pursuant to IDEA, "the court, in its discretion, may award reasonable attorneys' fees" to, among others, "a prevailing party [in an IDEA action] who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3). A party who only partially prevails "may recover attorneys' fees commensurate with the party's 'degree of success.'" *L.H. v. Chino Valley Unified Sch. Dist.*, 944 F. Supp. 2d 867, 871 (C.D. Cal. 2013) (quoting *Aguirre v. Los Angeles Unified Sch. Dist.*, 461 F.3d 1114, 1121 (9th Cir. 2006)).

A motion for summary judgment is not the proper procedural vehicle to adjudicate this particular attorneys' fee dispute. If Plaintiffs wish to recover their attorneys' fees from the IDEA litigation, they should file an appropriate post-adjudication motion and carefully detail what proportion of their attorneys' fees are attributable to the AT issue. If the District wishes to argue that Plaintiffs are not entitled to the requested amount of attorneys' fees for whatever reason, it may do so in response to that motion.

1 **V. CONCLUSION**

2
3 For the foregoing reasons, the District's motion for summary judgment is
4 GRANTED.

5
6
7
8
9 DATED: August 25, 2015

10 
11 _____
12 CORMAC J. CARNEY
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28